

Commercial Lending Update

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UNLAWFUL DETAINER STATUTES MUST BE STRICTLY FOLLOWED AFTER NONJUDICIAL FORECLOSURE

In December 2018, the California Supreme Court reversed an appellate court decision over when a hold-over tenant, in possession of a property sold in a nonjudicial foreclosure, may be served with a notice to quit. *Dr. Leevil, LLC. v. Westlake Health Care Center*, 431 P.3d 151 (Cal. 2018). Westlake Village Property, L.P. (Westlake Village) owned property in Thousand Oaks that it leased to Westlake Health Care Center (Westlake Health) so that the latter could operate a skilled nursing facility on the property. Westlake Village obtained a bank loan secured by a deed of trust. After Westlake Village defaulted the bank sold the promissory note and deed of trust to Dr. Leevil, LLC (Dr. Leevil).

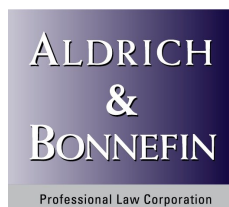
Dr. Leevil proceeded with a nonjudicial foreclosure and bought the property at a trustee's sale. The very next day, Dr. Leevil served Westlake Health with a three-day notice to quit. Five days after serving the notice to quit, Dr. Leevil recorded title to the property. Dr. Leevil commenced an unlawful detainer action 40 days after serving the notice to quit. Westlake Health answered the complaint by alleging that its lease was senior to Dr. Leevil's deed

of trust and that the notice to quit was invalid because it was served before title was recorded.

Usually a lease made before the execution of a deed a trust survives a subsequent foreclosure and requires that the purchaser take property subject to the lease. However, leases can be made subordinate to a future deed of trust and the trial court found that Westlake Health's lease was subordinate to the deed of trust and was extinguished by the trustee's sale. The court also found that the notice to quit was valid. In *Dr. Leevil, LLC. v. Westlake Health Care Center*, 215 Cal. Rptr. 3d 127 (Ct. App. 2017), the appellate court affirmed the trial court's decision due in part to the appellate court's misinterpretation of a separate appellate court decision of the same statute in *U.S. Financial, L.P. v. McLitus*, 211 Cal. Rptr. 3d 149 (Ct. App. 2016).

The *Leevil* appellate court said:

McLitus relies on the language of [CCP Section 1161a(b)(3)] which provides that "a person who holds over and continues in possession of . . . real property after a three-day written notice to quit the property has been served . . . may be removed therefrom . . . [w]here the property has been sold in accordance with [Civil Code



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Section 2924] . . . and the title under the sale has been duly perfected.” The statute does not require that title be perfected (i.e., that the trustee’s deed be recorded) before service of the three-day notice. It requires that title be perfected before a tenant “may be removed” from the property. To conclude otherwise, this court would have to impose an additional requirement onto the statutorily required notice to quit, i.e., perfection of title before service.

(Emphasis in original.)

The California Supreme Court granted review. The court found that title must be perfected before serving a notice to quit. The court noted:

It has long been recognized that the unlawful detainer statutes are to be strictly construed and that relief not statutorily authorized may not be given due to the summary nature of the proceedings. Because Dr. Leevil served the three-day notice to quit before it perfected title, it did not bring itself within the scope of section 1161a(b), as that provision is most naturally read, before taking the first step in the removal process that the statute authorizes. Its notice to quit was, therefore, premature and void, and its unlawful detainer action, improper.

Accordingly, the California Supreme Court reversed the appellate court’s judgment.